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The History of English Law before the Time of Edward I, by Frederick Pollock and Frederic William Maitland Book Review

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Pollock, Frederick and Frederic William Maitland. *The History of English Law Before the Time of Edward I*. Indianapolis: Liberty Fund, [2009]. 2v. (725 p., 786 p.). Paperback. ISBN: 978-0-86597-752-5. \$110.50.

The Liberty Fund, in its commendable effort to reprint the scholarship of the seventeenth, eighteenth, and nineteenth centuries, has republished the second (1898) edition of Pollock and Maitland's 2-volume *History of English Law Before the Time of Edward I*. This work represents a turning point in the study of legal history as well as a turning point in the authors' relationship. Let us consider the latter point first.

Of the two, Frederick Pollock (1845-1937) was already a scholar of formidable reach and reputation. He had published notable works on contracts (1876) and torts (1887). He was editor (1883-1919) of the *Law Quarterly Review*; from 1883 he was Corpus Professor of Jurisprudence at Oxford. In these capacities Pollock was a perceptive mentor to the younger Frederic William Maitland (1850-1906), who like Pollock had studied at Eton and at Trinity College, Cambridge, and who also had been called to the bar from Lincoln's Inn. In particular, Pollock introduced Maitland to a circle of friends who would support and stimulate his future work. These included the Russian-born medieval historian Paul Vinogradoff and Cambridge-educated critic and savant Leslie Stephen (father of Virginia Woolf and uncle-by-marriage of Maitland's future wife Henrietta Florence Fisher). After unsuccessfully seeking a position at Oxford, Maitland had in 1884 secured a readership at Cambridge. There he subsequently would be elected Downing Professor of the Laws of England.

Acting on a suggestion made by Vinogradoff, Maitland in 1887 published his first major work, the three-volume *Bracton's Note Book*, an edition of the case notes of Henry de Bracton, reputed author of the great thirteenth-century treatise *De Legibus et Consuetudinibus Angliae*. The same year, Maitland helped found the Selden Society; over the next two decades he was closely involved in editing or commissioning editions of an impressive range of medieval legal documents. Because of the efforts of Maitland and his successors, we have in our hands authoritative editions of

records that otherwise might have been lost; or that at best would have been utilized by small numbers of scholars. First class editorial work, however, seldom generates the sort of fame that today follows Maitland's name. He owes his status as a god of legal history to his work on *The History of English Law*, conceived in 1889 and first published in 1895. Maitland's biographers affirm a story (a legend, really) that after Pollock lingered over the composition of a chapter on Anglo-Saxon law, Maitland rushed to compose the remaining chapters. There is little doubt that Pollock exercised a certain influence over the whole work; certainly Cambridge University Press placed his name first on the title pages. But the work is essentially Maitland's.

The History of English Law begins with a series of chapters based on standard chronological or cultural divisions ("The Dark Age in Legal History," "Anglo-Saxon Law," "Norman Law," "England Under the Norman Kings,") and moves to chapters based on intellectual factors, including "Roman and Canon Law," a long-standing interest of Maitland's, and memorably, "The Age of Glanvill" and "The Age of Bracton." The remaining chapters, several of which are books-within-a-book, are driven by more technical topics: landed tenures, legal "conditions" of men, jurisdiction and communities, ownership, contracts, inheritance, family law, criminal law, and procedures. Chief among Maitland's virtues was his ability to present complex subjects in direct, easily comprehended prose. Thus he was able to give engaging, telling explanations of what might otherwise have been bewildering, dull, or both. See, for instance, his extended discussions of landed tenures—by military tenancy, serjeantry, socage, and villeinage [I: 243-313, 377-405]. It is a mark of Maitland's work that, having shown us the human possibilities, he has in the meantime kept an eye on underlying principles. The result is that we come away with the mental image of a world as complex and as comprehensible as our own. More, we come away with the sense, possibly illusory, that we have learned to think like a medieval person.

Maitland's work is open to criticism on several fronts. The scholar S.F.C. Milsom, whose bibliography and notes conclude the Liberty Fund edition, has argued that Maitland was too much Bracton's disciple, too much inclined to allow *De Legibus et Consuetu-*

dinibus Angliae to influence his perception of earlier events, and indeed, too quick to assume that the death of Bracton's royal patron (Henry III, d. 1272) was the natural end of an era. [For a perceptive assessment of these and other matters, see Milsom's "Maitland, Frederic William," in the Oxford Dictionary of National Biography.] Still, Milsom agrees that Maitland and Pollock's great work is very much alive more than a century after its publication. If confirmation were needed, this reviewer recently turned up via FirstSearch 126 records of *The History of English Law*.

It is only a slight exaggeration to say that Maitland created the discipline of English legal history. He did so with considerable freedom from national prejudices, notably the sort of patriotic motives that had characterized so much of "Whiggish" historical writing. Maitland's cosmopolitan affinities stretched in one direction from Cambridge right across Europe, and in another from Cambridge to Cambridge (U.S.). There is an heroic element to his life, too, as he wrote with remarkable speed, racing against ailments that periodically debilitated him and eventually laid him low. Since one of Maitland's enduring legacies is his prose style, we cannot do better than close with passages of the sort that plentifully await readers of *The History of English Law*.

Discussing the state of French law at the time in the tenth-century, when William the Conqueror's Viking ancestors established themselves in Normandy: "Their invasions occurred in the very midnight of the legal history of France; indeed they brought the midnight with them." [I: 71]

On the balance between customary law and written laws during Bracton's time: "And if in one sense England was never to be a 'country of the written law,' it had become preeminently the country of the written record." [I: 239]

On the dangers of formulary law, such as had developed by the mid-thirteenth century: "It may become an occult science, a black art, a labyrinth of which the clue has been lost." [I: 239]

Commenting on the linguistic pleasures of the concept of *servitium* (service): “A single Latin stock has thrown out various branches; the whole of medieval society seems held together by the twigs of those branches.” [I: 299]

Pointing out the difficulties of legal fictions, especially the one that regarded monks and nuns as “dead to the world”: “A fiction, however, which would regard a living man as dead must find that limits are set to it by this material world. A monk does wrong or suffers wrong; we cannot treat the case as though wrong had been done to a corpse or by a ghost.” [I: 459]

Illuminating the connotations of “*seisin*”: “If on the one hand ‘*seisin*’ is connected with ‘to seize,’ on the other it is connected with ‘to sit’ and ‘to set’: —the man who is seised is the man who is sitting on land; when he was put in *seisin* he was set there and made to sit there.” [II: 31]

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